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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,870	11/14/2002	Colin Henry Hamilton	DUMME18.001APC	2920
20995	7590	10/05/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,870

Applicant(s)

HAMILTON ET AL.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/10/02</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second upper film layer on the second layer of claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Currently, the drawings show a second upper film layer disposed on the first layer (as arranged in claim 1). To examine claim 2, the examiner assumes the claim to mean that the second upper film layer is disposed on the first layer.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 5, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Beguhn (US 4,236,652).

Regarding claim 1, Beguhn discloses a sachet 10 comprising a tray portion 11 and a composite structure 12 having a first semi-rigid layer 18 and a second layer 14. Both layers 18 and 14 form aperture regions at 16 with second layer 14 being a rupturable film at 16.

As to claim 3, Beguhn discloses score line 16.

As to claims 4 and 5, Beguhn discloses 18 sealed to 14 over their entire area, which includes the aperture region. Said seal remains intact after rupture (see Figures 4 and 5).

Regarding claim 11, Beguhn discloses a sachet 10 comprising a semi-rigid member 18 with weakened region 16; and a reservoir 13 formed by overlaid first flexible film layer 26 and second flexible film layer 14 with the second film layer having a

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rupturable film component at 16. Second film layer 14 is sealed to semi-rigid member 18 over the entire area, including the aperture region 16.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beguhn in view of Weaver, Jr. (US 5,277,920; hereinafter Weaver).

As mentioned above, the examiner is interpreting this claim to mean a second upper film layer on the first semi-rigid layer as is shown in Figure 2 of the instant application. Beguhn, as applied to claim 1 above, discloses the claimed invention except for the second upper film layer.

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Weaver discloses a second upper film layer 58 over a rupturable sachet 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the sachet of Beguhn with a second upper film layer in order to prevent inadvertent rupture of aperture region and the opening of the sachet.

4. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cockburn (US 6,041,930) in view of Coggsell (US 5,529,188).

Regarding claim 8, Cockburn discloses a sachet (Figures 1-4) with a semi-rigid member 11 with a weakened region 15, and a reservoir means 14 formed by first flexible film layer 12 overlaid by second flexible film layer 13 and adapted to contain flowable substance 19. The second film layer 13 includes aperture 16 and is sealed to semi-rigid member 11 over its entire area, including the aperture region. Cockburn meets all limitations claimed by the applicant except for the aperture comprising a rupturable film component.

Cockburn forms aperture 16 by punching a hole in film 31 at station 24.

Coggsell discloses an aperture region (intersection of lines 30) formed on an inner seal from scored lines 30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the aperture of Cockburn by simply scoring the sheet (as taught by Coggsell) instead of completely punching through the film in order to provide a complete double seal over the compartment and improve the strength of the seal while maintaining the aperture feature.

As to claim 9, weakened region 15 of Cockburn is a score line.

As to claim 10, first flexible film 12 and second flexible film 13 of Cockburn are formed from separate film members 31 and 32, which are sealed in their peripheral regions by rollers 34 and 35.

5. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cockburn-Coggsell as applied to claim 8 above, and further in view of Sengewald (US 4,884,694).

Regarding claim 6, Cockburn-Coggsell discloses a method for forming a sachet comprising injecting a flowable substance, placing an upper sheet assembly over the tray portions, and non-releasably sealing the peripheral portions (see Figure 5).

Cockburn-Coggsell lacks, or does not expressly disclose forming an array of indentations in a film layer.

Sengewald discloses forming an array of indentations in a film layer (see Figure 8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the method of Cockburn-Coggsell with an indentation-forming step in order to enable the storage of a larger volume of material within the sachet.

As to claim 7, the examiner takes Official Notice that the use of batch mode processing to fill packages was common and well known in the packaging art and would have been obvious to use in the method of Cockburn-Coggsell-Sengewald in order to use the same equipment for different flowable substances.

Applicant, of course, has the right to challenge this Official Notice in response to this decision and demand production of evidence in support thereof, provided such

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challenge is accompanied by adequate information or argument that, on its face, creates a reasonable doubt regarding the circumstances justifying the Official Notice.

See In Re Boon, 439 F.2d 724, 169 USPQ 231, 234 (CCPA 1971).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Greg Pickett  
Examiner  
22 September 2004

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700